MENTAL HEALTH ADVANCE DIRECTIVES IMPACTS

BRIEFING REPORT

REPORT DIGEST

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JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

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Overview

The federal Patient Self-Determination Act of 1991 enables individuals to create health care advance directives. These advance directives are written statements made by an individual, while competent, concerning their wishes about future medical treatment. Examples of advance directives include the type of medical care to be provided should an individual become terminally ill or permanently unconscious and unable to speak for themselves. Most health care institutions, such as long-term care facilities and hospitals, are required to provide patients with information on advance directives and to ensure compliance with state law regarding advance directives.[1]

Twenty-four states (in addition to Washington) have passed additional legislation establishing the ability of individuals to create a mental health advance directive.[2] A mental health advance directive is similar to a health care advance directive, but provides a method for competent individuals to state their written wishes about future mental health treatment should they become incapacitated.

Mandate

The Legislature passed ESSB 5223, "Mental Health Advance Directives," during the 2003 Legislative Session. This act establishes the right of individuals to create mental health advance directives. Section 25 of the legislation also states that should a resident of a long-term care facility be admitted to an inpatient psychiatric hospital based on a mental health advance directive, the long-term care facility must accept the resident for readmission on the same basis as if the inpatient admission had been for a physical condition. The Joint Legislative Audit and Review Committee (JLARC) was requested to conduct an evaluation of the operation and impact of this portion of the legislation.

Evaluation Issue: Mental Health Advance Directives and Long-term Care Facilities

The issue identified in section 25 of ESSB 5223, which provides the basis for the JLARC study, is related to a concern about unintended consequences of mental health advance directives: could they provide an avenue for long-term care facilities to rid themselves of difficult patients?[3] For example, assume that a disruptive nursing home resident has indicated in their mental health advance directive that hospital admission for mental health care is their desired treatment option in the event of a psychiatric episode. Would the nursing home use the mental health advance directive as an opportunity to admit the resident to a hospital and then subsequently refuse to readmit him or her, upon completion of inpatient mental health treatment, to the nursing home?

Current state and federal regulations require long-term care facilities to have "bed-hold" and readmission policies that establish residents' right to return in the event of a hospitalization. In Washington State, nursing homes are required to hold a resident's "bed" open for up to 18 days per year for social or therapeutic leave. In the event that a hospital stay exceeded the "bed-hold" period, the resident has the right to return to the first available bed in the facility.[4]

Over 12,000 Washington citizens receive state-funded care as residents of 268 nursing homes. An additional 9,700 persons receive state-funded long-term care services in a variety of community residential settings.[5]

Because mental health advance directives are a recent phenomenon in Washington State, there appears to be little if any research documenting their usage in nursing homes. An updated form to be provided to and signed by all individuals upon initial authorization of state-funded long-term care services does indicate that clients have the right to create advance directives "about medical and/or mental health care."[6] However, informal surveys and anecdotal evidence suggest that very few, if any, nursing home residents in Washington have mental health advance directives.[7]

Future Monitoring and Evaluation

None of the information presented above suggests in any way that long-term care facilities intend to use mental health advance directives as a way to remove specific residents. However, regardless of intent, the infrequent use of mental health advance directives means that the *potential* for long-term care facilities to use mental health advance directives as a mechanism for discharging mentally ill residents is minimal at this time.

The presence of mentally ill residents in nursing homes is well established in the research literature. The fraction of nursing home residents with mental health problems is estimated to be as high as 80 to 90 percent; behavioral problems are estimated to be present in 54 to 75 percent of nursing home residents.[8] This high rate of mental illness does include many individuals with some degree of dementia who are unlikely to require inpatient psychiatric care. Nonetheless, should the use of mental health advance directives increase, an environment could be created where the removal of problematic residents from long-term care facilities is a possibility. For this reason, a JLARC follow-up study in two to three years to monitor the use of mental health advance directives and their impact on long-term care facility residents is desirable.[9]

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[1] "Background: Psychiatric Advance Directives," Duke University Program on Psychiatric Advance Directives website, http://pad.duhs.duke.edu/background.html.

[2] Although most states permit limited mental health advanced directives as part of health care advance directives, 24 states besides Washington have specifically authorized advance directives for mental health. See Duke University Program on Psychiatric Advance Directives website, http://pad.duhs.duke.edu/statutes.html.

[3] For a discussion of the extra resources required to care for mentally ill residents and the adequacy of mental health treatment in nursing homes, see Cornelia Beck, Rebecca Doan, and Marisue Cody, "Nursing Assistants as Providers of Mental Health Care in Nursing Homes," *Generations*, Spring 2002, pp. 66-71.

[4] See RCW 70.129 for the rights of residents of long-term care facilities and WAC 388-97-047 concerning nursing home "bed-hold" policy for social ands therapeutic leave.

[5] Washington State Caseload Forecast Council website, http://www.cfc.wa.gov/mon_rpts.html ; note that May 2004 caseload of 9,783 adults receiving care in community residential settings includes residents of adult family homes, assisted living facilities and some individuals receiving care in their own homes. A listing of Washington State nursing homes and other long-term care facilities is available on the website of the Department of Social and Health Services – Aging and Disability Services Administration, http://www.aasa.dshs.wa.gov/Resources/rcshelp.htm.

[6] The form "Your Rights and Responsibilities When You Receive Services Offered by Aging and Disability Services Administration", DSHS 16-172, is to be provided to all new clients by DSHS-Aging and Disability Administration staff.

[7] E-mail surveys of regional offices by the Long-Term Care Ombudsman (Department of Community, Trade and Economic Development) and the program manager for the ECS program (Aging and Disability Services Administration, Department of Social and Health Services) found no long-term care facility residents with mental health advance directives.

[8] See P.N. Tariot, "General Approaches to Behavioral Disturbances" in W.F. Reichman and P.R. Katz, editors, **Psychiatric Care in the Nursing Home**, New York: Oxford University, 1996; M. Jackson, W. Spector and P. Rabins, "Risk of Behavior Problems Among Nursing Home Residents in the United States," *Journal of Aging and Health*, November 1997, pp. 451-472; J.E. Streim, B.W. Rovner and I.R. Katz, "Psychiatric Aspects of Nursing Home Care" in J. Sadavoy and L.W. Lazarus, editors, **Comprehensive Review of Geriatric Psychiatry II**, Washington DC, American Psychiatric Press, 1996, pp. 907-936.

[9] It should be noted that there will be a number of challenges to such an evaluation, such as obtaining information on residents with mental health advance directives and identifying the reasons why residents were not re-admitted to a specific facility following a hospital stay.